



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** September 23, 2011

**IBA Report Number:** 11-56

**City Council Docket Date:** September 26, 2011

**Item Number:** 200

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# Preliminary Statement of Work for Landfill Operations – Updated Report

## OVERVIEW

On September 26, 2011 the City Council will be reviewing the Preliminary Statement of Work (PSOW) for the Landfill Operations managed competition process. Current PSOW services include:

- Landfill Operations
- Greenery Operations
- Hazmat Landfill Load Check (supervised by City enforcement staff)
- Fee Booth Operations
- Landfill Maintenance and Monitoring (supervised by City environmental monitoring staff)

The Landfill Operations PSOW was first reviewed by the Rules Committee on May 18, 2011. Numerous issues were raised at this meeting, and the Committee directed the Business Office to return to the Committee on June 22 to provide further information. The Business Office provided responses to that request in a June 14, 2011 memorandum to the Council President and City Council Members. Additionally, the PSOW was updated based on Rules Committee discussion, and information regarding the landfill divestiture effort was provided.

Based on the additional information and updated PSOW, and in anticipation of the June 22, 2011 Rules Committee meeting, the IBA issued report 11-39, entitled "Preliminary Statement of Work for Landfill Operations." Report 11-39 covered the following issues: service level considerations; the required approval of a private sector contractor by the Department of the Navy; enforcement activities and a related City Attorney Memorandum of Law, dated June 16, 2011; information on current City contracts related to landfill operations; and consideration of ISO 14001 certification, fee booth operations, piecemeal competition and City liability with regard to landfill operations.

At the June 22, 2011 Rules Committee meeting, the Landfill Operations PSOW item was removed from the agenda. However, the Committee requested that staff provide additional information in anticipation of their upcoming review of the PSOW at the following Rules Committee meeting on July 13, 2011. Staff provided responses to the Committee's request (in a July 6, 2011 memorandum to Council) and updated the PSOW for the second time.

The updated Landfill Operations PSOW was reviewed by the Rules Committee at its July 13, 2011 meeting. The Committee forwarded the PSOW to the full City Council without recommendation, and requested staff to provide further information in response to Committee questions.

This report provides a brief summary of the managed competition process, issues for the Council to consider at the September 26, 2011 meeting, and information on next steps in the managed competition process.

## **FISCAL/POLICY DISCUSSION**

### **Managed Competition Process**

As mandated by City Charter Section 117(c), City Council is responsible for ensuring that service quality in the City is maintained when it has been determined by the Mayor that a function will undergo a managed competition process. Aside from approval of the Mayor's recommendation for award to an outside bidder, this is the only defined role of the City Council in the managed competition process.

Council approval of the PSOW is an important step in the process, as it provides Council the opportunity to review service levels and performance standards for inclusion in the Request for Proposal (RFP) prior to its issuance. Once approved, the PSOW will form the foundation of the Final SOW that will be included in the RFP. Service levels cannot change between the PSOW as approved by Council and Final SOW/RFP.

According to the Business Office, more detailed performance data will be included in the more detailed SOW that will be developed in preparation for issuing an RFP. Some data is not made available prior to developing the SOW due to procurement sensitivity. Review of the PSOW is the Council's only opportunity to provide input to help shape the Final SOW and RFP.

### **Issues to Consider**

#### ***Current Service Levels***

The Managed Competition Guide states "the purpose of the PSOW is to document the service levels associated with the delivery of the functions(s) selected for competition." Within the PSOW, the Functions and Services section discusses the activities which will be considered for inclusion in the Final SOW. During our review, we identified several activities in the Functions and Services section for which the PSOW does not include specific performance standards or service levels – for example: environmental standards and regulatory mandates; and standards

for landfill cover processes that maximize landfill lifespan while meeting regulatory requirements.

To ensure retention of current service levels related to landfill care, the Council should consider clarifying, as part of a motion, that all current service levels must be maintained (or enhanced) by the chosen service provider. Below is a list of examples where this would apply:

- Regulatory mandates (including waste diversion and greenhouse gas emissions)
- Environmental standards of the Environmental Services Department (including those which exceed regulatory mandates)
- Navy lease requirements
- Landfill cover processes that minimize the use of landfill space and the use of greenery materials as alternative daily cover, while meeting regulatory requirements
- Material disposal processes, such that slope and drainage are not negatively impacted by improper disposal
- Evaluating the quantities and types of greenery products available for sale (for example, mulch, compost, and wood chips)
- Saleable greenery products that are processed to market-quality standards
- Maximizing the diversion of greenery materials from disposal, while enhancing the beneficial use of such materials (for example, processed mulch, compost, and wood chip products)
- Equipment maintenance and repair for City equipment
- Required staff certifications
- Performance related to fire prevention

### ***Compaction Level (Airspace Utilization Factor)***

Several Committee members and stakeholders have expressed concerns regarding the compaction level, or Airspace Utilization Factor (AUF), at the landfill. An increased AUF is associated with increased compaction, which will increase landfill lifespan. In discussing this issue at the May 18 Rules Committee meeting, the Director of the Environmental Services Department noted it is reasonably easy to achieve the 0.50 landfill AUF which is called for in the proposed PSOW.

In response to Committee questions, staff provided Council with historical levels for the AUF, which is calculated based on refuse tonnage per refuse volume in cubic yards:

**Airspace Utilization Factor (AUF) for Past Calendar Years**

2005	2006	2007	2008	2009	2010
.488	.485	.505	.468	.441	.505

In the September 9, 2011 memorandum to Council, staff notes that Council could incorporate a higher compaction level standard into the SOW. Staff has indicated that an increased compaction level of .55 to .60 would be achievable and would aid in extending the life of the landfill. The cost impact, if any, for increasing the compaction level would not be known until

the bids have been developed; and it is possible, but not certain, that there could be impacts to customer wait times for unloading trash.

Staff has stated that each .05 increase in the compaction level could add an estimated additional year to the landfill lifespan, and that if there are additional costs associated with a greater compaction standard, they would be far outweighed by the benefits of increasing the landfill lifespan. It is currently estimated that the landfill will reach the end of its lifespan in 2021 or 2022, based on current operations and refuse tonnage. Based on staff's reference to the achievability of the .55 to .60 compaction level, we recommend that Council consider increasing the compaction level standard from .50 to .55 or .60.

Additionally, Council may wish to discuss how the City could utilize incentives for enhanced performance or sanctions for lesser performance with regard to the compaction level or other environmental performance standards. It is important to note that if the compaction level standard is set too low, it would not be prudent to provide large incentives for enhanced performance.

### ***Non-Competed Activities***

The following activities will not be included in the landfill operations managed competition process. These activities have been determined to be ineligible for competition because of legal issues, increased liability risks, or a determination has been made that the activity is inherently governmental. There are nine related positions that will be retained as City staff.

#### Enforcement, Landfill Maintenance and Monitoring, and Fee Booth Administration

On June 16, 2011, the City Attorney provided a Memorandum of Law (MOL) regarding enforcement functions at Miramar Landfill in response to a request from staff. The MOL concludes, in part, that "...persons not employed by the City may act in a limited role as enforcement officers, but they may not issue citations or notices of violation." The PSOW has been updated to address the City Attorney's MOL. The PSOW now states that three positions will be removed from the competition. These positions will remain as City staff and provide oversight of the load check activities and enforcement. Additionally, five landfill maintenance and monitoring oversight positions and a fee booth/franchise administration position will not be included in this managed competition process.

#### Strategic Plan

Strategic planning activities will not be outsourced. These activities will continue to be performed by landfill maintenance and monitoring personnel referenced in the section above. Staff anticipates bringing the long-term strategic plan to the Natural Resources and Culture Committee by the end of the calendar year. It had been placed on hold during the divestiture process last year.

#### Community Clean-ups

Community clean-ups are not within the scope of this managed competition process. Community clean-ups will continue to be performed by the Environmental Services Department and funded through the Refuse Disposal Fund.

### ***Fee Booth Activities***

The PSOW for landfill operations currently includes fee booth activities. Concerns regarding potential outsourcing of the fee booth functions have been raised by the Rules Committee. Information from surveyed communities regarding fee booth revenue collections and load check responsibilities was provided in a chart attached to staff's July 6, 2011 memo to Council. This chart shows that the County of San Bernardino retained its fee booth operations "to avoid issues relating to conflicts of interest, money handling, the discretionary assessment of fees, and tonnage tracking and reporting to the State." Also, staff has indicated that Sonoma and Riverside Counties handle fee booth operations for their landfills.

At the July 13, 2011 Rules Committee meeting, a Committee Member raised the question as to whether the City will move toward accepting credit cards at the landfill. Staff has noted that there is currently no plan to move in this direction and pointed out that credit card companies charge fees, which would add to the cost of running the landfill. Staff noted in the September 9, 2011 memorandum that if Council so wished, they could incorporate this requirement into the PSOW. The SOW would then be written to require the chosen service provider to accept credit cards at the landfill, which would provide greater convenience to the public.

### ***Other Changes to the PSOW***

In the latest version of the PSOW (July 6, 2011), Attachment 1, entitled "Landfill Operations Contract List," was updated to include information on risks associated with contractor failure. Information was also added regarding whether the City or potential external contractor will have oversight of these contracts. Seven of the listed contracts have been designated as retaining City oversight. The overseeing entity for the remainder of the 28 listed contracts will be determined by the SOW team or through the bidding process.

The dollar amounts associated with the contracts contained in the Landfill Operations Contract List were requested at the Rules Committee meeting. Staff has not provided this information, as they consider it procurement sensitive until the RFP is released.

In addition, because concerns were raised by the Rules Committee regarding bird control with respect to the Navy lease, the PSOW now states that the SOW will include requirements for effective bird control.

### ***Additional Items Discussed at the July 13, 2011 Rules Committee Meeting***

#### **Repercussions for City Breach of Navy Lease Contract**

An explanation of the repercussions if the City breaches the contract with the Navy was requested. Staff provided a copy of the Ground Lease with the Navy as an attachment to the September 9, 2011 memorandum to Council. Staff also outlined the process to be taken if a default under the Lease should occur, and indicated that remedies against a private contractor that caused a City breach of the Navy Lease would include contract termination, damages, specific performance and injunctive relief.

### Requested Information Regarding Other California Landfills

It was requested that staff provide additional information on the California landfills mentioned in the staff presentation at the July 13, 2011 Rules Committee meeting. Staff provided information obtained from the State of California's CalRecycle on the sizes of the permitted and active disposal sites in California and whether they are publicly or privately owned and operated. This information has been listed in Attachment 1 to the September 9, 2011 memorandum from the Business Office to the City Council. In addition, Attachment 1 indicates the following: of the permitted and active disposal sites in California, approximately 42% are privately owned and operated, 52% are publicly owned and operated, and 6% are publicly owned and privately operated (based on permitted cubic yards).

### Maintenance of City Revenues

At the July 13, 2011 Rules Committee meeting, staff reiterated that if the City selects a private contractor to run the landfill, the City would continue to set the disposal fees at Miramar, and revenue would continue to be City revenue.

### Next Steps

Once the PSOW is approved by the Council, the City will begin preparing for the solicitation. A Final SOW will be developed and will be included in the RFP. Staff has indicated that the RFP is expected to be issued at the end of February 2012.

The City will receive proposals and forward them to the Managed Competition Independent Review Board (MCIRB), who will evaluate and make a recommendation to the Mayor (anticipated at the end of July 2012). If the MCIRB recommends that the Landfill Operations functions be awarded to an independent contractor, the Mayor can accept or reject the MCIRB recommendation. If accepted, the Mayor will appropriately notify all labor organizations and begin the meet and confer process. The Mayor will then forward the recommendation to the Council, which may reject or accept the recommendation.

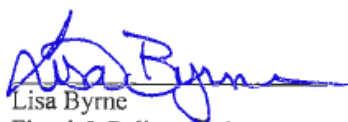
Before the proposed award to the selected bidder can be brought to Council for approval, an appropriate level of CEQA review must be conducted. If the determination is made that a potential contract is a project under CEQA, the level of CEQA review could result in an Environmental Impact Report, a Mitigated Negative Declaration, a Negative Declaration, or the project could be found to be consistent with a previously certified environmental document.


Lastly, it has been noted that the Navy has the ultimate authority in approving a private sector contractor to perform landfill operations. Navy approval of an independent contractor to operate the landfill cannot be obtained before details of a potential arrangement are known. In staff's July 6, 2011 memo to Council, it is noted that section 29 of the Ground Lease with the Navy requires that the Navy's consent or approval for a private contractor to operate on the landfill site shall not be unreasonably withheld. But currently there is no timetable for the Navy's approval process. Staff's memo provides a table showing timelines for past Navy approval of contracts.

## CONCLUSION

Based upon the changes that have been made to the PSOW in response to Committee concerns and our most recent review of the revised PSOW for the landfill operations, including reviewing service level data and performance measures, the IBA recommends approval of the PSOW with the following considerations:

- To ensure retention of current service levels related to landfill care, Council clarify, as part of a motion, that all current service levels must be maintained (or enhanced) by the chosen service provider. A list of examples where this would apply is provided on page 3 of this report.
- Based on staff's reference to the achievability of the .55 to .60 compaction level and the associated benefit of extending the life of the landfill, Council consider increasing the compaction level standard from .50 to .55 or .60.

  
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